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UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

FRESENIUS USA, INC., a Massachusetts
 corporation; and FRESENIUS MEDICAL CARE
 HOLDINGS, INC., a New York corporation,

Plaintiffs and Counter-Defendants,

v.

BAXTER INTERNATIONAL INC., a Delaware
 corporation; and BAXTER HEALTHCARE
 CORPORATION, a Delaware corporation,,

Defendants and Counter-Plaintiffs.

Case No. C 03-1431 SBA (EDL)

**[PROPOSED] ORDER GRANTING IN
 PART BAXTER'S MOTION TO
 COMPEL PURSUANT TO
 RULES 37(a) AND 37(b)**

Magistrate Judge Elizabeth D. Laporte

1 The Motion to Compel Pursuant to Rules 37(a) and 37(b) brought by Baxter International Inc.
2 and Baxter Healthcare Corporation ("Baxter") against Fresenius USA, Inc. and Fresenius Medical Care
3 Holdings, Inc. ("Fresenius") came before the Court for argument on January 17, 2006. The Court
4 having considered the materials submitted by the parties and the arguments in open court,
5

6 IT IS HEREBY ORDERED:

7 Baxter's Motion to Compel is GRANTED IN PART and DENIED IN PART as follows:

8 (1) Fresenius shall produce, in electronic form, a legend showing every "ship to" number
9 that corresponds to each "sold to" number in Fresenius' SAP database. Fresenius shall comply with this
10 portion of this Order on or before March 17, 2006.
11

12 (2) Fresenius shall make all reasonable efforts to identify those customers who were
13 consolidated into one "sold to" number and to identify the multiple "sold to" numbers previously
14 associated with each such customer. Fresenius shall advise Baxter of the results of those efforts on or
15 before March 1, 2006.

16 (3) Fresenius shall produce, in electronic form, a report from Fresenius' SAP database
17 showing the "contract number" associated with each "invoice number" that has appeared in the invoice-
18 level sales data previously produced by Fresenius in this litigation. Fresenius shall comply with this
19 portion of this Order on or before May 8, 2006. Baxter shall reimburse Fresenius for out-of-pocket
20 expenses incurred in complying with this portion of this Order. Fresenius shall inform Baxter of any
21 expected out-of-pocket expenses before incurring them.

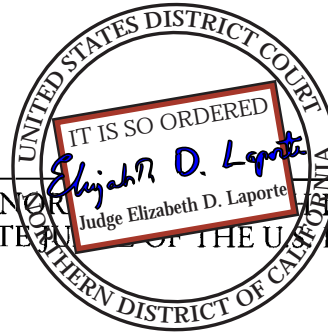
22 (4) Fresenius shall produce all existing pre-April 1999 invoice-level sales data in substantially
23 the same form and with the same searchability features as it exists within Fresenius. Fresenius shall
24 comply with this portion of this Order on or before March 2, 2006.
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(5) Fresenius shall provide answers, in writing, to six of the questions appearing on Exhibit 17 of Baxter's Motion to Compel. These six questions shall include the four questions quoted on page 11 of Baxter's Reply Brief and questions No. 3 (beginning "In the databases . . .") and No. 9 (beginning "Explain what products . . .") on Exhibit 17. Fresenius shall comply with this portion of this Order on or before March 3, 2006.

IT IS SO ORDERED.

DATED: March 1, 2006

HONORABLE JUDGE ELIZABETH D. LAPORTE
MAGISTRATE JUDGE OF THE U.S. DISTRICT COURT



CH01/ 12459358.3

CERTIFICATE OF SERVICE

The undersigned attorney certifies, under penalty of perjury, as follows:

I am a citizen of the United States and am a partner in the Chicago office of the law firm of Gardner Carton & Douglas. I am over 18 years of age and not a party to this action. My business address is 191 N. Wacker Dr. #3700, Chicago, IL 60606.

On 21 February 2006, I served the following:

- Proposed Order Granting in Part Baxter's Motion to Compel Pursuant to Rules 37(a) and 37(b)

on the parties or their counsel shown below as follows:

By electronic delivery to:

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Executed on 21 February 2006 at Chicago, IL,

/s/ Patrick J. Kelleher
Patrick J. Kelleher